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SAN DIEGO UNIFIED SCHOOL DISTRICT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

T.B., Allison Brenneise and Robert
Brenneise,,

Plaintiffs,

v.

SAN DIEGO UNIFIED SCHOOL
DISTRICT,

Defendant.

Case No. 08-CV-0028 MMA (WMc)

**DECLARATION OF AMY R.
LEVINE IN SUPPORT OF
DISTRICT'S MOTION FOR
SUMMARY JUDGMENT (FIFTH
CLAIM FOR RELIEF)**

Date:
Time:
Dept : Courtroom 5
Judge : Honorable Michael M. Anello

Trial: February 14, 2017

Complaint Filed: January 4, 2008

I, AMY R. LEVINE, declare:

1. I am an attorney licensed to practice law in this Court, and one of the attorneys of record for Defendant San Diego Unified School District ("District"). I am submitting this declaration in support of the District's Motion for Summary Judgment. I know these facts to be true based on my own personal knowledge, except for the facts which I believe to be true upon information and believe. If

called as a witness, I could competently testify to these facts.
**DECLARATION OF AMY R. LEVINE IN SUPPORT OF DISTRICT'S MOTION FOR SUMMARY
JUDGMENT (FIFTH CLAIM FOR RELIEF)**
(WMc)

Case No. 08-CV-0028 MMA

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2. As the attorney of record for the District, I am familiar with the Decproceedings in this case, including the administrative record and transcripts from the due process hearing, the proceedings after the due process hearing, and the discovery requests and responses that were part of this federal litigation.

3. On May 14-18, 21-25, 29-31, June 1, 11-13, 19, 20, and July 11-13, 16-20, 2007, Administrative Law Judge Susan Ruff of the Office of Administrative Hearings (“OAH”) heard testimony on due process claims filed by the Plaintiffs and Defendant under the Individuals with Disabilities Education Act (“IDEA”). The testimony was transcribed at the hearing and a certified transcript of the hearing was provided to both parties. This entire record has been previously lodged with the Court.

4. On November 29, 2007, those involved in drafting T.B.’s 2007-2008 school year IEP, including District staff and Mrs. Brenneise, held a meeting regarding T.B.’s IEP. My firm received the tapes for this meeting and we hired Escriptionist.com, a professional transcription service to transcribe the tapes. Attached hereto as Exhibit A [SDUSD06885-07036] is a true and correct copy of the transcript of that meeting.

5. On December 21, 2007, those involved in drafting T.B.’s 2007-2008 school year IEP, including District staff and Mrs. Brenneise, held a meeting regarding T.B.’s IEP. My firm received the tape for this meeting and we hired Escriptionist.com, a professional transcription service to transcribe the tape. Attached hereto as Exhibit B [SDUSD07037-07054] is a true and correct copy of the transcript of that meeting.

6. On May 21, 2010, the District served on Plaintiff Mrs. Brenneise “[District’s] Request for Admissions to Allison Brenneise – Set One,” a true and correct copy of which is attached hereto as Exhibit C. On November 3, 2010, I was

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1 served with “Response of Plaintiff Allison Brenneise to Defendant’s Request for
2 Admissions – Set One,” a true and correct copy of which is attached hereto as
3 Exhibit D.

4 7. On May 21, 2010, the District served on Plaintiff Mr. Brenneise
5 “[District’s] Request for Admissions to Robert Brenneise – Set One,” a true and
6 correct copy of which is attached hereto as Exhibit E. On November 3, 2010, I was
7 served with “Response of Plaintiff Robert Brenneise to Defendant’s Request for
8 Admissions – Set One,” a true and correct copy of which is attached hereto as
9 Exhibit F.

10 8. On May 21, 2010, the District served on Plaintiff T.B. “[District’s]
11 Request for Admissions to T.B. – Set One,” a true and correct copy of which is
12 attached hereto as Exhibit G. On November 3, 2010, I was served with “Response
13 of Plaintiff [T.B.] to Defendant’s Request for Admissions – Set One,” a true and
14 correct copy of which is attached hereto as Exhibit H.

15 9. On November 18, 2010, the District deposed Mr. Chris Vinceneux.
16 Attached hereto as Exhibit I is a true and correct copy of the certification page and
17 the excerpts from the transcript of that deposition that are cited in the motion.

18 10. On December 21, 2010, the District deposed Mrs. Allison Brenneise.
19 Attached hereto as Exhibit J is a true and correct copy of the certification page and
20 the excerpts from the transcript of that deposition that are cited in the motion.
21 Attached hereto as Exhibit K is a true and correct copy of an excerpt from the
22 District’s Exhibit 20 to Mrs. Brenneise’s deposition (A. Brenneise’s notes
23 [PC&D000785]).

24 11. Attached hereto as Exhibit L is a true and correct copy of emails to and
25 from Mrs. Brenneise produced by the Plaintiffs during discovery [PC&D001228-
26 001229].

27 12. On November 6, 2007, those involved in T.B.’s transition plan held a
28

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meeting regarding the status of the transition. My firm received the tapes for this meeting and we hired verbalink.com, a professional transcription service to transcribe the tapes. Attached hereto as Exhibit M [SDUSD06818-06849] is a true and correct copy of the transcript of that meeting.

13. On July 29, 2011, the District deposed Mrs. Allison Brenneise. Attached hereto as Exhibit N is a true and correct copy of the certification page and the excerpts from the transcript of that deposition that are cited in the motion.

14. After the decision was issued by OAH on October 5, 2007, the Brenneises filed a further due process complaint with OAH regarding the IEP offer made by the District regarding T.B.'s 2007 extended school year ("ESY") program. Attached hereto as Exhibit O is a true and correct copy of Plaintiffs' Due Process Complaint, filed with OAH on November 6, 2007 [P&CD 3533-44]. In addition, after the OAH decision, the Brenneises also filed a compliance complaint with the California Department of Education ("CDE") regarding the District's purported failure to provide T.B. with a certificated teacher in the home. Attached hereto as Exhibit P is a true and correct copy of Plaintiffs' Compliance Complaint, filed with the California Department of Education on November 21, 2007 [SDUSD 10165-73].

15. Following the IEP meeting on December 21, 2007, T.B.'s parents refused to agree to the IEP offers made for the 2007-2008 school year. Accordingly, the District filed for due process for a determination that its December 2007 IEP offer provided T.B. with a free appropriate public education. Attached hereto as Exhibit Q is a true and correct copy of Plaintiffs' Due Process Complaint, filed with OAH on January 31, 2008 [SDUSD 2137-40]. The Brenneises filed a motion to dismiss this Complaint because T.B. and his parents were moving out of state, and T.B. had been withdrawn as a student from the District, stating that "Nonetheless, Student reserves his rights to litigate these issues in the future should

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1 it be appropriate to do so.”

2 16. Attached hereto as Exhibit R is a true and correct copy of Plaintiffs’
3 Motion to Dismiss the January 31, 2008 Complaint [SDUSD 2060-72]. After the
4 District received notice that T.B. was moving out of state, at the parents’ attorney’s
5 request, it agreed to dismiss the Complaint as moot. Attached hereto as Exhibit S is
6 a true and correct copy of the OAH Order of Dismissal, dated March 18, 2008
7 [SDUSD 2058-59].

8 17. On October 9, 2009, the District served on Plaintiff Mrs. Allison
9 Brenneise Interrogatories, Set One. Attached hereto as Exhibit T is a true and
10 correct copy of Mrs. Brenneise’s Responses to District’s Interrogatories, Set One;
11 and as Exhibits U and V, true and correct copies of her Amended and Second
12 Amended Responses to District’s Interrogatories, Set One.

13 18. Attached hereto as Exhibits W-CC are true and correct copies of
14 declarations and supplemental declarations filed in support of District’s Motion for
15 Summary Judgment on November 28, 2011. Exhibit W is a true and correct copy
16 of Sara Bonnet’s Declaration (Doc. 209-5); Exhibit X is a true and correct copy of
17 Phyllis Gahan’s Declaration (Doc. 209-6) and Exhibits A-D filed under seal;
18 Exhibit Y is a true and correct copy of Jennifer Gorman’s Declaration (Doc. 209-8)
19 and Exhibit A filed under seal; Exhibit Z is a true and correct copy of Jennifer
20 Gorman’s Supplemental Declaration (Doc 226-5); Exhibit AA is a true and correct
21 copy of Matthew Howarth’s Declaration (Doc. 209-9) and Exhibit A Filed Under
22 Seal; Exhibit BB is a true and correct copy of Linda Vergara’s Declaration (Doc.
23 209-12) and Exhibit A filed under seal; Exhibit CC is a true and correct copy of
24 Linda Vergara’s Supplemental Declaration (Doc. 226-4); Exhibit DD is a true and
25 correct copy of MarySue Glynn’s Declaration (Doc 209-7) and Exhibits A-MM
26 Filed Under Seal; Exhibit EE is a true and correct copy of MarySue Glynn’s
27 Supplemental Declaration and Exhibits NN-OO Filed Under Seal (Doc. 226-3);

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1 Exhibit FF is a true and correct copy of Sheila Doctors's Declaration (209-4) and
2 Exhibits A-MM Filed Under Seal.

3 19. On November 17 and 18, 2010, I approached Marcy Tiffany, counsel
4 for Plaintiffs, about the possibility of stipulating to the admissibility of the certified
5 transcripts of the testimony provided during the OAH hearing. On November 18,
6 2010, Ms. Tiffany agreed that Plaintiff would not object to Defendant's reliance on
7 the testimony contained in the certified transcripts. The next day I sent a
8 confirming letter to Ms. Tiffany noting "our agreement yesterday ... that the parties
9 will be able to cite to the transcript from the due process hearing in motions in this
10 litigation, without regard to the fact that they are not actually depositions taken in
11 this case. A true and correct copy of my letter is attached as Exhibit GG
12 (November 19, 2010 letter from A. Levine to M. Tiffany). I did not receive a
13 response to this letter from Ms. Tiffany.

14 I declare under penalty of perjury under the laws of the United States that the
15 foregoing is true and correct. Executed this 26th day of September, 2016, in San
16 Francisco, California.

17
18 /s/Amy R. Levine
Amy R. Levine